

# **Exhibit 20 Supplement Mitchell Deposition**

Clifton Mitchell

Pages: 36, 40, 41, 42, 44, 45, 46, 47, 48, 49, 50, 52, 55,  
57, 58, 63, 64, 65, 66, 67, 68, 74, 76, 77, 78, 80, 83, 84,  
86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100,  
101, 103, 104, 108, 110, 111

Dated: March 25, 2021

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Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

\_\_\_\_\_  
Charles Joseph Freitag, Jr., as :  
Administrator of the Estate of :  
Charles Joseph Freitag, Sr., :  
Plaintiff, :  
V. :  
Bucks County; Primecare Medical, :  
Inc.; et al, :  
Defendants. :  
\_\_\_\_\_

Thursday, March 25, 2021

VIDEOTAPED ZOOM DEPOSITION OF:

CLIFTON MITCHELL,

Called for oral examination by counsel for the plaintiff, pursuant to notice, before Ramona L. Devlin, of Kaplan, Leaman & Wolfe, a Notary Public, in and for the Commonwealth of Pennsylvania, beginning at 9:33 a.m., when were present on behalf of the respective parties.

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1 you have to address questions of discipline for  
2 officers, if you can estimate?

3 A It varies. It varies from the  
4 standpoint of whether it would be the attendance  
5 issues and/or some other issues. You know, it is  
6 just a normal course of business.

7 Q Okay. I identified as an issue in my  
8 hypothetical there the question of officers  
9 checking cells as part of mental health or  
10 suicide watches. I want to talk to you more  
11 specifically about those in just a moment.

12 First, though, would you agree, sir,  
13 that the most important responsibility of  
14 correctional staff is to ensure the health and  
15 safety of people incarcerated in the facility?

16 A The edict is care, custody and  
17 control.

18 Q Right. So care is the first thing  
19 you said; right?

20 A Yeah.

21 Q Meaning that -- protect and care  
22 would seem to mean health and safety of the  
23 person in your control; is that right?

24 A Yes.

25 Q All right. Sir, would you agree,

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1       are any number of factors that could come up  
2       which might increase the risk of suicide in a  
3       prison, would you agree, sir?

4           A       Yes, but also in the community.

5           Q       All right. So when you are working  
6       in a correctional facility with your vast three  
7       and a half decade experience, it sounds like you  
8       understood that correctional staff working under  
9       you, and yourself included, had a responsibility  
10      to do whatever you could to prevent people from  
11      harming themselves; is that correct, sir?

12          A       Yes.

13          Q       Now, I understand that mental health  
14       staff are the ones who ultimately make the  
15       decision about what mental health measures are  
16       appropriate. Would you agree with that, sir?

17          A       Correct.

18          Q       But in terms of what goes on on the  
19       housing areas, it is the officers who are  
20       patrolling those areas; is that correct?

21          A       Yes, that is their duty.

22          Q       And the officer's job is in the event  
23       of a risk of suicide for a prisoner is to carry  
24       out whatever precautions have been directed by  
25       supervisors or mental health staff; is that

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1      correct, sir?

2            A       Yes.

3            Q       And do I understand correctly that  
4       the prison administration, including with  
5       reference to the exhibit that we looked at a  
6       short time ago, puts procedures in place that are  
7       intended to make sure that officers do what is  
8       necessary to prevent people from harming  
9       themselves?

10          A       Yes.

11          Q       And you would expect correctional  
12      officers to understand their obligations under  
13      those policies; is that correct, sir?

14          A       Yes.

15          Q       And you would expect correctional  
16      officers to follow all directives given to them  
17      about how to carry out their responsibilities; is  
18      that correct, sir?

19          A       Yes.

20          Q       And you would expect correctional  
21      officers to do that without question; is that  
22      correct, sir?

23          A       Well, again, the -- one of the things  
24      in a paramilitary organization, you follow  
25      procedure, but that doesn't mean you can't

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1 question it afterwards.

2 Q Fair enough. But as an example, if  
3 you told officers on a certain housing area, hey,  
4 this guy is on regular watch, which means he has  
5 got to be checked every 30 minutes, you wouldn't  
6 expect officers to say no, I'm not doing that,  
7 would you?

8 A Correct.

9 Q You would expect officers to do it,  
10 and if they had a problem with it, they would  
11 tell you about it afterwards; correct?

12 A Correct.

13 Q All right. I just mentioned the  
14 phrase regular watch. Do you have a recollection  
15 of the different levels of watches that were in  
16 place or that were available in the correctional  
17 facility back in 2018?

18 A Historically, there has been a  
19 regular watch, I think they call it an acute  
20 watch, and then there was a suicide watch, I  
21 think, as I recall.

22 Q Okay. So my question, just to be  
23 clear, was not intended as a quiz to see what you  
24 remember, really, I just want to establish that  
25 there are different levels and it sounds like,

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1                   THE WITNESS: I'm trying to remember.

2   BY MR. FEINBERG:

3                   Q         Okay. Well, would you agree, sir,  
4         that it is not a question of the officer getting  
5         around to the check whenever the officer can, the  
6         officer has got to do the 30-minute check; right?

7                   A         Yep.

8                   Q         Okay. In fact, actually, that is a  
9         good point. I want to bring up just a couple of  
10       exhibits which address the responsibilities of  
11       officers under these different protocols. I'm  
12       going to show you now Exhibit P-6. Do you have  
13       P-6 in front of you, sir?

14                  A         Yes.

15                  Q         Scrolling down to Page 2, and let's  
16       do this, sir: First, are you able to read the  
17       text on your phone?

18                  A         I'm enlarging it.

19                  Q         Yeah. Okay. Could you do me a  
20       favor, read the highlighted text to yourself and  
21       let me know when you are finished.

22                  A         Okay.

23                  Q         So would you agree, sir, that what is  
24       described for the level three watch is that there  
25       should be six observations of a prisoner on this

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1 watch status every hour?

2 A Between the inmate minder and the  
3 officer.

4 Q Yes, that is -- in fact, I'll break  
5 it down, sir. The officers are required to see  
6 the prisoner on a level three watch status once  
7 every 30 minutes; correct?

8 A Yes.

9 Q So that is two per hour; correct?

10 A Yes.

11 Q And the inmate monitors are required  
12 to see the prisoner on level three status every  
13 15 minutes, so four per hour; is that correct?

14 A Correct.

15 MR. KOLANSKY: Objection. John,  
16 would you establish, please, if you are going to  
17 ask that question, I don't have an objection to  
18 the overall question, but would you establish  
19 that they see them at the same times as the  
20 officers do as well or that they stagger them so  
21 that they are on the ten and the 20 or -- because  
22 you haven't established that.

23 You say six times an hour, but it  
24 could be that inmates or guards interpret it as  
25 on the 15 and the 45, as opposed to every 15

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1 minutes. Could you just discuss that, please?

2 BY MR. FEINBERG:

3 Q Mr. Mitchell, would you agree that  
4 the person's cell, when they are on level three  
5 status, that there will be six occasions with  
6 someone looking into their cell to check on them  
7 every hour?

8 A Yes.

9 Q All right. With regard to the inmate  
10 monitors, which we just looked at with Exhibit 6,  
11 I'll show you one other exhibit.

12 This is previously marked as Exhibit  
13 P-7, watch and observation procedures. Do you  
14 see Exhibit P-7 in front of you, sir?

15 A Yes.

16 Q I'm scrolling down to Page 5 and 6.  
17 Let me just show you this highlighted text on the  
18 bottom of page five. This references inmate  
19 monitor forms. Do you see where my cursor is,  
20 sir?

21 A Yes.

22 Q I'll scroll down now to the top of  
23 Page 6, and read into the record the text next to  
24 lowercase letter E, which states: It is the  
25 module officer's responsibility to assure that

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1 inmate monitors are using IMFs, inmate monitor  
2 forms correctly.

3 Sir, would you agree that that was a  
4 well-understood duty for correctional officers  
5 back in 2018?

6 A Yes.

7 Q So the responsibility of the inmate  
8 monitor is to actually go to the cell and look  
9 into it, would you agree; sir?

10 A Yes and no.

11 Q Why do you say that?

12 A Because the inmate may not be in the  
13 cell.

14 Q Okay. Fair point. So the inmate  
15 monitor has to get eyes on the inmate who is the  
16 subject of the check; right?

17 A Correct.

18 Q All right. And so the purpose of  
19 these forms, sir, is, can we agree, to make sure  
20 that the person who is on that regular watch  
21 check, the level three set of checks, is safe and  
22 alive; correct?

23 A Yes.

24 Q All right. So obviously, if the  
25 prisoner on level three status is walking around,

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1      then that can be noted by the inmate monitor;  
2      correct?

3            A       Yes.

4            Q       Okay. Would you also agree, sir,  
5      that it is the responsibility of the module  
6      officer, meaning the officer working on the  
7      housing block, to ensure that the inmate monitor  
8      is doing his job?

9            A       Yes.

10          Q       So in other words, an inmate monitor  
11     can't just -- strike that. If, in a hypothetical  
12     example, an inmate monitor was literally sitting  
13     on his bed in his cell and just filling out the  
14     form without checking on the prisoner who is the  
15     subject of the watch, that would be completely  
16     improper for the inmate monitor; correct?

17          A       Yes.

18          Q       And it would be the officer's  
19     responsibility to make sure that the inmate  
20     monitor was doing his job; is that correct?

21          A       Yes.

22          Q       So, sir, in your position as the  
23     deputy warden back in August of 2018, if you  
24     directed placement on level three status, that  
25     meant you expected officers to do their checks no

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1 more than every 30 minutes; is that correct?

2 A Yes.

3 Q And you directed that officers should  
4 ensure that inmate monitors were doing their  
5 checks at least once every 15 minutes; is that  
6 correct?

7 A Per the procedure.

8 Q Yes. Okay. And the procedure which  
9 we just described, which could be seeing the  
10 person on the cell block or seeing the person in  
11 their cell, et cetera, wherever the person could  
12 be found; is that correct?

13 A Yes.

14 Q All right. In other words, someone  
15 has eyes on that prisoner six times every hour;  
16 is that correct?

17 A Yes.

18 Q And when you order people who are  
19 working under your supervision to do that, your  
20 expectation is it is going to be done; is that  
21 correct?

22 A Yes.

23 Q If it is not done, they are violating  
24 your order; is that correct?

25 A Violating policy.

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1 MR. KOLANSKY: Objection to the form.

2 BY MR. FEINBERG:

3 Q Okay. They are violating -- and that  
4 was my next question. If it is not done, they  
5 are violating the policy; is that correct?

6 A Yes.

7 Q And as we discussed, the policy is  
8 present to help -- or it's aimed at, as far as  
9 you understand, preserving the safety of people  
10 incarcerated in the facility; is that correct?

11 A Yes.

12 Q So if you violate the policy -- when  
13 I say you, I am talking generally, so if officers  
14 violate the policy, they are placing, at risk,  
15 the safety of the person they are supposed to be  
16 protecting; is that correct?

17 MR. KOLANSKY: Objection. Calls for  
18 a conclusion.

19 BY MR. FEINBERG:

20 Q You can answer, sir.

21 A Yes.

22 MR. FEINBERG: Okay. Let's go off  
23 the record.

24 (Break.)

25 BY MR. FEINBERG:

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1           A       Problems -- you have to -- there is  
2       two different issues, inmates versus officers.

3           Q       Okay. Well, I think you told me  
4       before that officers were responsible for inmate  
5       monitors, so let me ask it that way.

6           Did anyone ever raise with you any  
7       questions or any concerns about officer's  
8       supervision of inmate monitors?

9           A       If there were problems with inmate  
10      monitors, they were fired and other ones were  
11      hired.

12          Q       Okay. Meaning -- they, meaning the  
13      inmate monitors; is that correct?

14          A       Meaning the officers would fire the  
15      inmate monitors and hire new monitors to replace  
16      them.

17          Q       Got it. So if I understand you  
18      correctly then the responsibility to supervise  
19      inmate monitors and to determine whether they  
20      were doing their jobs was a responsibility  
21      carried out by officers; is that correct?

22          A       Correct.

23          Q       So the question that I intended to  
24      ask, and I acknowledge that maybe it was poorly  
25      phrased, was from your perspective, as an

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1       that better than me.

2           Q       All right. Well, let me ask you this  
3       question: Do you remember ever -- do you  
4       remember any suicide which led to a conclusion  
5       that an officer had not properly conducted the  
6       cell checks that were required under relevant  
7       policies?

8           A       No.

9           Q       Let me ask you some more specific  
10      questions about Mr. Freitag. I showed you, at  
11      the beginning of the deposition, the e-mail that  
12      Paul Lang sent to you and that you responded back  
13      to him.

14                  And in your e-mail to him, you  
15      suggest that he should give you a call. Can I  
16      assume that you did, in fact, speak with Mr.  
17      Lang?

18           A       Yes.

19           Q       What do you remember Mr. Lang telling  
20      you, if anything?

21           A       As in the e-mail, he said he was  
22      concerned about him and I said okay.

23           Q       Do you remember knowing anything  
24      about Mr. Freitag's case, his criminal case that  
25      is, at that point in time?

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1      suicide attempts?

2            A        No.

3            Q        All right. Can I assume from the  
4        e-mail -- strike that. Let me actually pull this  
5        up. This is the e-mail that Dr. Cassidy sent to  
6        the mental health staff that's been previously  
7        marked as Exhibit P-24.

8                    Now, I understand that Dr. Cassidy is  
9        reporting something that you said to her, and you  
10       didn't write this e-mail, but Dr. Cassidy  
11       reports, as highlighted here on Exhibit P-24,  
12       Deputy Warden Mitchell wanted him, referring to  
13       Mr. Freitag, seen because he is somewhat older,  
14       is here on serious charges, aggravated assault  
15       and has sentencing coming up. Do you recall  
16       saying any of those things to Dr. Cassidy?

17            A        I probably did.

18            Q        Okay. So is it fair to say, sir,  
19       that when -- based even on the limited knowledge  
20       that you may have had concerning Mr. Freitag's  
21       charges and his demographic factors, you had some  
22       reason to be concerned about him?

23            A        I had concern because I had gotten  
24       the call.

25            Q        Okay. And once you get a concern

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1 like that communicated to you, sir, is it your  
2 default reaction to inform the mental health  
3 staff?

4 A It depends on where the call was  
5 coming from initially and how much first-hand  
6 knowledge I have, but ordinarily, I would  
7 probably do the same thing.

8 Q Okay. In these circumstances,  
9 someone told you there were concerns about mental  
10 health, and can I assume, sir, you don't have  
11 mental health training?

12 A Well, just basic training.

13 Q Okay, but you --

14 A Not a doctor.

15 Q You are not a clinician? You can't  
16 make a mental health diagnosis; right?

17 A Yeah, I don't play one on Sunday.

18 Q Okay. All right. So in that case,  
19 sir, if there were questions about mental health  
20 status, it is -- naturally, you would defer those  
21 questions to the mental health staff; is that  
22 correct?

23 A Correct.

24 Q And can I assume, given your  
25 administrative responsibilities, that you had

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1 case concerning a rather high-profile murder in  
2 Bucks County; is that correct?

3 A Correct.

4 Q All right. But Mr. Freitag didn't  
5 stand out in any way like Mr. DiNardo; is that  
6 correct?

7 A No, sir.

8 Q Am I correct --

9 MR. KOLANSKY: Meaning yes, sir? He  
10 asked you if he is correct. Is he correct? You  
11 said no, sir and he asked --

12 THE WITNESS: Freitag didn't stand  
13 out for me.

14 MR. KOLANSKY: Did not. Okay.

15 BY MR. FEINBERG:

16 Q So am I correct in understanding that  
17 the first communication you would have had about  
18 Mr. Freitag's sentencing was in this e-mail from  
19 Exhibit 1 that I have now in front of you from  
20 Ara, A-R-A, Kimbrough, K-I-M-B-R-O-U-G-H? Do you  
21 see that, sir?

22 A Yes. Yes.

23 Q All right. So the --

24 A Ara Kimbrough is -- he did, and I  
25 think still is the records office supervisor.

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1 Q All right. So you were -- so Mr.  
2 Kimbrough sent that e-mail to you and also to  
3 Assistant Warden Budd, B-U-D-D, noting received  
4 six to 12 years for AA, meaning aggravated  
5 assault, no misconducts or detainees. Can we  
6 agree that e-mail was sent at 3:52 p.m.; right?

7 A Yes.

8 Q It looks like then that you forwarded  
9 the e-mail to, as we have already established,  
10 the case manager staff; is that correct?

11 A Yes.

12 Q And it looks like you jumped on it  
13 pretty quickly and just did it three minutes  
14 later at 3:55 p.m.; is that correct?

15 A Yes.

16 Q The text reads, unlock, my sure he is  
17 on a watch. I think I have interpreted it, and I  
18 want you to tell me if I am correct in that the  
19 my was a typo?

20 A Yes.

21 Q What you intended to say was make  
22 sure; correct?

23 A Correct.

24 Q All right. All right. So the  
25 message that you communicated three minutes after

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1 you received the first mail was unlock, make sure  
2 he is on a watch?

3 A Yes.

4 Q What did you -- for someone who has  
5 not -- has not worked in the Bucks County  
6 Correctional Facility, what were you  
7 communicating with that e-mail, sir?

8 A The intent was for them to interview  
9 and make a determination what level he should be  
10 on. I don't make those determinations, just to  
11 make sure that he was on a watch.

12 Q Okay. Now, when you said unlock, do  
13 I understand correctly that different levels of  
14 watch have different provisions concerning  
15 whether the cell is locked?

16 A Yes, but in this case, he was already  
17 unlocked. That was -- you know, that was -- you  
18 know, I didn't expect this to be litigated in  
19 this manner.

20 As you can see, it is close to 4:00  
21 and I'm ready to leave, and in my mind, I was  
22 saying the guy is already unlocked, to make sure  
23 that he is on a watch and to evaluate.

24 They know the process, to go through  
25 and interview and make the determination of what

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1 level it should be on.

2 Q Okay. And it looks like Mr. Metellus  
3 then is the one who made the decision level  
4 three; is that correct, sir?

5 A Yeah.

6 Q And I see that you were not copied on  
7 the e-mail here, but it was sent to Brianne  
8 Morrow, who is another case manager; is that  
9 correct?

10 A Correct.

11 Q All right. And can I assume that --  
12 well, strike that. So you are saying, sir, that  
13 you didn't know what level of watch he would be  
14 placed on?

15 A No.

16 Q And your interpretation is that  
17 unlock meant that that was his status now --

18 A That was his current --

19 Q -- that he be placed on --

20 A That was his current status that I  
21 was aware of.

22 (Court reporter interruption.)

23 BY MR. FEINBERG:

24 Q I apologize. I believe I may have  
25 interrupted Mr. Mitchell, so let me try this

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1 again. Mr. Mitchell, bottom line is this: You  
2 wanted to make sure that Mr. Freitag was on some  
3 level of watch; is that correct?

4 A Yes.

5 Q And if someone directed that Mr.  
6 Freitag would be placed on a watch level, your  
7 expectation is that officers were going to comply  
8 with the directives of that watch level; is that  
9 correct?

10 A Correct.

11 Q So if someone made the decision that  
12 he should be placed on level three watch, you  
13 would expect, as we have described, that officers  
14 would see him within every 30 minutes; is that  
15 correct?

16 A Whatever the level called for.

17 Q Okay. And well, since we are dealing  
18 with level three here, that is what you would  
19 expect; is that correct?

20 A Yes.

21 Q And you would expect, with level  
22 three, that inmate monitors would be seeing Mr.  
23 Freitag every 15 minutes; is that correct?

24 A Yes.

25 Q Did you think there was anything else

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1 you needed to do besides sending this e-mail?

2 A No.

3 Q And, sir, I'm not suggesting that,  
4 I'm just asking. Can I assume that as the deputy  
5 warden, if you send a directive to people  
6 reporting to you as their supervisor, that they  
7 will do what you tell them; right?

8 A Yes.

9 Q All right. Mr. Freitag's suicide was  
10 the next morning, Saturday, August 25th. How did  
11 you hear about it?

12 A You said it was Saturday?

13 Q Correct.

14 A I probably got a phone call.

15 Q Okay. Do you remember going into the  
16 facility? You have already told me that you were  
17 on the block; is that right?

18 A Yeah. I think I was.

19 Q I'll show you one document just to  
20 refresh your recollection. This is Exhibit 13,  
21 report prepared by Mr. Bochenek, and the text  
22 here reads, this investigator, meaning Mr.  
23 Bochenek, Director Christopher Pirolli, Warden  
24 Paul Lagana, Deputy Warden Cliff Mitchell,  
25 Assistant Warden Lil Budd, CMHS Director Abbey

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1           Q       And my understanding then is that the  
2 presumption was any time someone comes back from  
3 court and they have got a state sentence, they  
4 will be placed on a level two precaution. Do you  
5 recall discussion over that, sir?

6           A       Yes.

7           Q       Did you offer any opinions or any  
8 thoughts as part of that conversation?

9           A       I agreed with it, but there were  
10 other issues, aside from the mortality issues  
11 versus the state commitments that I was concerned  
12 with -- you know, with the records office and so  
13 forth and so on.

14          Q       What were those issues that you were  
15 concerned about, sir?

16          A       Well, again, you know, sometimes  
17 there were mitigating circumstances with regard  
18 to the sentence, the length of the sentence, the  
19 individual who received the sentence, you know,  
20 to -- I'll give you a candid example.

21          Q       Before you do that, sir, can I make  
22 sure I understand what you are saying first?

23          A       Yes.

24          Q       Yeah. My question for you is this:  
25 First, it sounds like what you are describing,

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1           A       Yes. From a general perspective with  
2   regard to, again, the totality of the institution  
3   and the occupants of the institution.

4           Q       Okay. All right. That is helpful  
5   information to have, sir. The question I  
6   intended to ask you, and this was a good  
7   digression though, but the question I intended to  
8   ask was: Did you have any other concerns about  
9   the way Mr. Freitag's case was handled that were  
10   raised in the mortality review?

11          A       Well, I guess the one issue was --  
12   that I was concerned with was the HIPAA.

13          Q       How do you mean?

14          A       Not having all the information that  
15   might have helped make a different decision one  
16   way or the other about anything. It wasn't just  
17   him.

18                 If you don't have all the information  
19   at the time to make an intelligent decision on  
20   any matters, it makes you handcuffed. You are  
21   kind of handcuffed.

22          Q       Oh, okay. So are you referring to  
23   the fact that the correctional staff who made the  
24   decision to place Mr. Freitag on level three did  
25   not have all the information about his background

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1       in their possession?

2           A       Well, I didn't.

3           Q       Right. And --

4           A       And I was the one referring it to  
5       them from the standpoint of, you know, you talked  
6       about his mental health and the suicides.

7           Q       Right. So you didn't. And  
8       obviously, we, as lawyers in this case, we have  
9       access to all of the information, which you did  
10      not have at that time. So just to confirm, you  
11      didn't know that he had two prior suicide  
12      attempts; is that correct?

13       A       Correct.

14       Q       You did not know that one of his  
15      suicide attempts was what, in fact, led to his  
16      arrest, prosecution, conviction and  
17      incarceration; is that correct?

18       A       Correct.

19                  MR. KOLANSKY: Objection to form.

20   BY MR. FEINBERG:

21       Q       You did not know that he had been  
22      expressing, for weeks, anxiety about his  
23      sentencing; is that correct?

24       A       No.

25       Q       You did not know anything about what

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1 his expectations were going into sentencing; is  
2 that correct?

3 A No.

4 Q And you did not know, given your  
5 answer to that last question, that a six to 12  
6 year sentence for his crimes was utterly shocking  
7 to Mr. Freitag? You had no idea; is that  
8 correct?

9 A It may have been shocking to him, but  
10 not to me.

11 Q Okay. Well, you were not in any  
12 position to know how he would react because you  
13 hadn't spoken to him; is that correct?

14 A Correct.

15 Q And can I assume that no one on the  
16 correctional side had spoken to Mr. Freitag about  
17 the mental health impact of his sentencing?

18 A I don't know.

19 Q Okay. Now, my understanding, sir, is  
20 that at that time in 2018, mental health staff  
21 were not available in the facility when people  
22 came back from court; is that correct, sir?

23 A It depends on what time they came  
24 back from court.

25 Q Okay. Well, I'll represent to you,

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1 now and that is my question.

2 BY MR. FEINBERG:

3 Q Mr. Mitchell, back in August of 2018,  
4 do you know -- do you remember when mental health  
5 staff left the facility?

6 A I had no recall the records of their  
7 attendance, attendance logs and so forth and so  
8 on. I don't know the specific answer to the  
9 question.

10 Q Can we assume though that if mental  
11 health staff were in the facility when people  
12 returned from custody, that instead of you asking  
13 case managers, without mental health training, to  
14 make these decisions, you would have done  
15 something else, namely reaching out to mental  
16 health staff?

17 MR. OSBORNE: Object to the form.

18 BY MR. FEINBERG:

19 Q Does that sound right, sir?

20 A Generally, yes.

21 Q Okay. And, again, my question is not  
22 aimed at quizzing you, I'm just trying to make a  
23 logical conclusion here.

24 We went through a whole series of  
25 questions about information that neither you, nor

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1       is some kind of monthly meeting between medical  
2       and the director and so forth and so on and it  
3       may have come out of that.

4           Q        Okay.  Would --

5                    MR. KOLANSKY:  When counsel asks if  
6       you recollect, that is a yes or no question.  It  
7       is not a "it might have" come out of whatever.

8                   THE WITNESS:  Okay.

9       BY MR. FEINBERG:

10          Q        Yeah.  And that is -- well, my next  
11       question for you, sir, is would you attend those  
12       monthly meetings?

13          A        No.  I have.

14          Q        All right.  So then the more specific  
15       question is:  Do you remember being in attendance  
16       at a meeting where this specific issue was  
17       addressed?

18          A        No.

19          Q        All right.  Can we assume, sir, based  
20       on your previous deposition testimony, that if  
21       mental health staff were regularly in the  
22       building until 5 or 5:30, in Mr. Freitag's  
23       situation, you would have contacted mental health  
24       staff once he got back to the building?

25                    MR. KOLANSKY:  Objection.  Calls for

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1 speculation.

2 BY MR. FEINBERG:

3 Q You can answer, sir.

4 A Yes.

5 Q I mean, that is completely consistent  
6 with what you just said, right, that if there  
7 were mental health concerns that you were not  
8 prepared to address, given your base of  
9 knowledge, they would naturally be the people to  
10 address the issues; is that correct, sir?

11 A Correct.

12 Q All right. One -- I asked you at the  
13 beginning, sir, about the site visit -- strike  
14 that.

15 In October of 2019, to confirm, you  
16 had not a single contact with anyone in the  
17 correctional facility following your retirement;  
18 is that correct?

19 A That is correct.

20 Q Didn't speak to a single person who  
21 worked there about things that were happening  
22 there?

23 A No.

24 Q So you have no idea what may have  
25 happened on any site visit by a mental health

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1 A No.

2 Q All right. Can we agree that the  
3 text shows it is dated August 25, 2018, refers to  
4 Charles Freitag, and it notes LVL, level three  
5 mental health watch; is that correct, sir?

6 A Yes.

7 Q So can we agree that as of the  
8 morning of August 25, 2018, Mr. Freitag -- strike  
9 that.

10 As of the morning of August 25, 2018,  
11 the module officers, bravo module, had been  
12 alerted to the fact that Mr. Freitag was on a  
13 level three watch; is that correct, sir?

14 A Yes.

15 Q All right. The next document I want  
16 to show you -- I assume you have not watched any  
17 video from that morning about what happened on  
18 that block?

19 A No.

20 Q All right. I am showing you now  
21 Exhibit 11, which is a report prepared by a  
22 Daniel Onisick, O-N-I-S-I-C-K. Do you know Mr.  
23 Onisick?

24 A Yes.

25 Q Mr. Onisick, the second page of his

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1 report, do you see here a timeline with bullet  
2 points that I'm highlighting?

3 A Yes.

4 Q All right. Would you agree that  
5 there is a reference to a check of cell B3, where  
6 Mr. Freitag was, at 10:21. Do you see that, sir?

7 A Yes.

8 Q And do you see that the next thing  
9 observed and -- strike that. Before I go on, let  
10 me know -- I'm saving you the time of reviewing  
11 the entire document, that what is reported here  
12 is the officer's watched surveillance video from  
13 that unit and then made a time record of what  
14 they observed. Do you understand what I have  
15 just described?

16 A Yes. Somebody watched the tape and  
17 wrote down times.

18 Q Okay. Great. We are on the same  
19 page. It looks like the next thing that happens  
20 after the cell check on 10:21 is at 10:55, so 34  
21 minutes and 11 seconds later, an inmate looked in  
22 Mr. Freitag's cell and alerted correctional  
23 officers to what happened. Do you see that, sir?

24 A Yes.

25 Q Can we agree that that 34-minute

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1 period is longer than what officers are required  
2 to do on the level three watch?

3 A Yes.

4 Q All right. Now, you told me before,  
5 in no uncertain terms, that level three -- the  
6 policies regarding level three watch are not just  
7 like do your best? It is a directive; right?

8 A Yes.

9 Q I want to show you some deposition  
10 testimony from one of the officers working on  
11 this block. His name is James Young. Do you  
12 remember any interactions with Officer James  
13 Young?

14 A No.

15 MR. FEINBERG: Bear with me for a  
16 moment. This will be Mr. Young's deposition  
17 testimony for counsel's benefit on Page 78. Sir,  
18 I'm going to ask you to read --

19 MR. KOLANSKY: Jon, enlarge that,  
20 please.

21 BY MR. FEINBERG:

22 Q Yeah. Let's do this, let's see -- I  
23 want to make sure I am in the right place. Sir,  
24 I'm going to ask you read the highlighted text  
25 here. Let me know when you are finished, and I

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1 will move it over to the next page.

2                   And before you do that, sir, let me  
3 note, so this is my questions of Mr. Young and  
4 Mr. Young giving me answers. The A is his answer  
5 and the Q is my question.

6               A         I'm familiar with them, familiar with  
7    pages like this.

8 Q Okay. All right. Fair enough. Have  
9 you read the text that I highlighted?

10 A Yes.

11 Q All right. I'll scroll over to the  
12 next page, and I'll ask you to read down to here.

13 A Okay.

14 Q All right. So would you agree --  
15 obviously, the document speaks for itself, but in  
16 sum and substance, would you agree Officer Young  
17 says, it is perfectly fine to do the level three  
18 watch by waiting 34 minutes between checks. That  
19 is what he says; right?

20 A On the column previous where it says  
21 the spirit of the policy, that is not the policy.

22 Q All right. Yeah. So would you agree  
23 that he didn't comply with the policy; is that  
24 right?

25 MR. KOLANSKY: Objection to the form.

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1 BY MR. FEINBERG:

2 Q Is that correct, sir?

3 A Not in my view.

4 Q All right. Did you -- in fact, let

5 me -- I do want to show you some video, sir.

6 What I'll be showing -- and, again, just to

7 confirm, sir, you told me you have not seen any

8 of this video; is that correct?

9 A No.

10 Q All right.

11 A Not that I recall.

12 Q All right. I'm putting up on the  
13 screen now -- for counsel's benefit, this is the  
14 portion of the video of the B module from August  
15 25, 2018 starting at 10:13 a.m.

16 I'm scrolling forward to seven  
17 minutes and 29 seconds. So, sir, I'm moving my  
18 cursor in front of what I believe to be cell  
19 three where Mr. Freitag was housed. Do you see  
20 where I am doing that, sir?

21 A Yeah. okay. It's by the stairwell.

22 Q Yeah. Okay. So I'm going to hit  
23 play, and in the next ten seconds, you will see  
24 an officer conduct a check in that cell.

25 All right. I'll stop it there at

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1      7:37. Would you agree that it looks like an  
2      officer looked into Mr. Freitag's cell. That is  
3      obvious; right?

4            A       Yes.

5            Q       My understanding is that that is  
6      Officer Murphy, who I believe is still here with  
7      us, and we will get his testimony later, and my  
8      understanding is that this also -- if you add --  
9      we are seven minutes and 37 seconds in from a  
10     video that started at 10:13 a.m., we are right at  
11     10:21 a.m.; okay? Do you agree with me, sir?

12          A       Yes, appears so.

13          Q       All right. So I want to fast forward  
14     all the way to 10:56 at 41 seconds in -- pardon  
15     me, 41 -- we will start at 41:35.

16                  I'll ask you to watch that same  
17     location, cell three, and I will represent to you  
18     that because we are 41 minutes in from a video  
19     that started at 10:13, we are at that 10:55 --  
20     10:54, 10:55.

21                  You see there is a prisoner walking  
22     towards Mr. Freitag's cell, he looks in, and then  
23     it looks like he says something to the officers  
24     at the booth. Would you agree with me, sir?

25          A       Yes.

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1 Q All right. I'll represent to you  
2 with that testimony from Officer Moody and  
3 Officer Young, that this is when Mr. Freitag was  
4 discovered.

5 The person in white, who was Mr.  
6 Monachelli made the -- alerted to them of what  
7 was happening at 10:55, 34 minutes after the last  
8 check. Do you understand everything I have laid  
9 out so far, sir?

10 A Yes.

11 Q All right. Do you have any idea what  
12 the officers were doing in that time period?  
13 Since you watched the video, I assume the answer  
14 is no. Can we agree on that, sir?

15 A Yes.

16 Q All right. I want to go back to the  
17 beginning where we watched -- we were seven and a  
18 half minutes in. I'm actually right at the  
19 moment there. We are at 7:43 with Officer Murphy  
20 standing by the door.

21 Do you see here where I am pointing  
22 my cursor, there is someone sitting at the  
23 podium?

24 A Yes, stand --

25 Q That person -- I am sorry, say that

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1 again, please.

2 A Standing, I guess.

3 Q Yeah. Okay. Yeah. He is present at  
4 the podium. My understanding --

5 MR. KOLANSKY: For the record, on the  
6 inside of the podium.

7 MR. FEINBERG: I'm sorry?

8 MR. KOLANSKY: For the record, on the  
9 inside of the podium; correct?

10 MR. FEINBERG: Yeah. Sure.

11 MR. KOLANSKY: Okay.

12 BY MR. FEINBERG:

13 Q So that is Mr. Young, Correctional  
14 Officer Young. He identified himself as the  
15 person wearing the hat.

16 I'm going to play this on fast  
17 forward at -- I think we can do 30 times the  
18 speed, and I'll ask you just to focus on that  
19 podium and just keep an eye on Officer Young. At  
20 11:29, so four minutes have gone by, he walked  
21 out. Would you agree?

22 A Yeah. I don't see him there.

23 Q Yeah. Okay. See there he is. I  
24 backed it up. We are now at 11:16. He is  
25 walking off the block. Would you agree?

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1 A No.

2 Q Oh, can you tell where he is going?

3 A It appears as if he is walking  
4 towards the alcove door to the yard.

5 Q Got it. Okay. So I'll fast forward,  
6 he come back pretty shortly. There is another  
7 officer on the block there at 12:29. All right.  
8 At 15:35, Mr. Young is back. So would you agree  
9 he has been gone for four minutes, give or take?

10 A Yes.

11 Q All right. Now, I'll represent to  
12 you, sir, my -- and I'll play this on fast action  
13 here, at 30 times the speed, that Mr. Young sits  
14 at that booth from all the way up to the time  
15 that Mr. Freitag is discovered.

16 I'll ask you to keep your eye on that  
17 booth. My question will be, do you agree that he  
18 is basically sitting there the entire time?

19 MR. KOLANSKY: Standing.

20 BY MR. FEINBERG:

21 Q Well, all right. Sitting -- he is  
22 present there for the entire time? Agreed, sir?  
23 Well, that will be my question.

24 A It appears so, and other people  
25 standing behind it also.

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1 Q All right. We have gotten to the  
2 point 41 minutes in where Mr. Freitag is  
3 discovered.

4 Did you agree with what I  
5 represented, that other than the four minutes or  
6 so where Mr. Young left the podium, he was there  
7 for that entire 34-minute period sitting or  
8 standing behind the podium?

9 A Appears so.

10 Q Yeah. Do you know of any reason or  
11 did you see any reason why Officer Young would  
12 not have been able to check in Mr. Freitag's cell  
13 in that time period?

14 A I don't know.

15 Q Do you know of any reason why Officer  
16 Young did not comply with the level three watch  
17 as you have described was required?

18 MR. KOLANSKY: Objection to the form  
19 of the question.

20 BY MR. FEINBERG:

21 Q You can answer.

22 A I don't know.

23 Q All right. Do you know whether --  
24 you told me before that no one asked you  
25 questions about this before, and you really had

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1 no idea about whether checks were taking place.

2 Did I understand your previous testimony  
3 correctly?

4 A Can you rephrase that question?

5 Q Yeah. Sure. Let me say it a  
6 different way. Can we just agree, sir, that  
7 there -- this is a clear example of Officer Young  
8 not complying with his responsibilities under the  
9 suicide watch protocol?

10 MR. KOLANSKY: Objection.

11 THE WITNESS: Yes.

12 BY MR. FEINBERG:

13 Q You can answer.

14 A It appears so.

15 Q All right. Which is something  
16 obviously that, as you said, would violate rules,  
17 that to your understanding, are intended to  
18 protect people in the facility; is that correct?

19 A Yes.

20 Q All right. I'm going to go back to  
21 the document that I showed you before, the inmate  
22 monitor form. I'm sorry I don't have it in front  
23 of you. This is Exhibit 9.

24 Are these documents things that you  
25 would look at with any regular basis during your

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1 time there, sir?

2 A Just while touring.

3 Q Okay. Then in that case, let me take  
4 20 seconds just to explain. There are  
5 abbreviations that are written all down the form  
6 there, and based on the previous testimony, our  
7 understanding is that every notation from Mr.  
8 Freitag on this document said that he was L, in  
9 his cell and F, sleeping. Do you see that, sir?

10 A Yes.

11 Q All right. So now I'm showing you  
12 the morning -- so I have scrolled over to the  
13 second page. And do you see here from 8:00 down,  
14 all the way through 10:45, every reference says  
15 LF, Mr. Freitag in his cell sleeping; is that  
16 correct?

17 A Yep.

18 Q We also see the inmate monitor's  
19 initials HC, and we know from previous testimony  
20 that that refers to a person named Hugh Caldwell.

21 I don't expect you to know him, but I  
22 just mention his name because I'm going to ask  
23 you more about him later. Do you understand what  
24 I have described so far for this form, sir?

25 A Yes.

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1 Q All right. I'm going to ask you  
2 specifically about 9:15. There is a reference  
3 there that says Mr. Freitag is in his cell  
4 sleeping. Do you see that, sir?

5 A Hold on a minute.

6 Q Sorry. Let me go back.

7 A Yeah. You got it highlighted there.

8 Q I spoke over you, and I am sorry.

9 You see that; is that correct?

10 A Yes.

11 Q All right. I am going to pull  
12 another video out. This is a video from 8:13  
13 a.m. For counsel's benefit, this is Bates  
14 stamped 460. All right, sir.

15 So this starts at 8:13 a.m., and I'm  
16 going all the way forward to about 59 minutes in,  
17 58:44.

18 Do you see the man in the uniform?  
19 He is white and he appears to have light gray  
20 hair. Do you see --

21 A I see the cursor. I see the cursor.

22 Q Okay. That is Mr. Freitag, I'll  
23 represent that to you. And I'm going to play  
24 this here, so we know -- I'm sorry.

25 By the way we are starting 8:13 a.m.,

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1 58 minutes in, that means we are at 9:11 or 9:12  
2 a.m. that morning. Do you understand what I have  
3 outlined, sir?

4 A Yeah. You see -- you are basically  
5 saying he is walking there at 9:15 --

6 Q Right.

7 A -- but he is supposed to be laying on  
8 the bed.

9 Q Yeah. So I'll just play this through  
10 on quick action here again, 30 times the speed.  
11 The video ends, and just for the sake of  
12 completeness, I'll show you the beginning of the  
13 next video at 9:13 a.m.

14 For counsel's benefit, this is Bates  
15 stamped 441. I got the wrong one. Sorry.  
16 Sorry. I keep doing the wrong one. Let me get  
17 rid of that. There it is. All right, sir.

18 So now we are starting at 9:13 and  
19 there is Freitag again. I'll fast forward. I've  
20 gone two minutes and 20 seconds in, so we are now  
21 at 9:17 or 9:18. Did you see him walk into his  
22 cell?

23 A Yeah. He went -- that was the med  
24 cart.

25 Q Yeah. Okay. So what you saw was Mr.

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1      Freitag waiting in line for medications at 9:15  
2      a.m.; is that correct?

3            A       Yes.

4            Q       So can we agree, perhaps this is  
5      obvious, but let's put it on the record, that  
6      this statement that Mr. Freitag was sleeping in  
7      his cell at 9:15 a.m. is false?

8            A       Yes.

9            Q       All right. I'm going to spare you  
10     the time of watching the entire video again to  
11     show you that there were no apparent inmate  
12     monitor observations of Mr. Freitag in his cell.

13                  Instead, I will show you Exhibit 10  
14     and just allow you to read the text. Exhibit 10,  
15     for your reference, is Mr. Bochenek's report from  
16     October of 2019, so 14 months later, and do you  
17     see where my cursor is in the middle of this page  
18     and I've highlighted some text?

19            A       Yes.

20            Q       Could you please read that  
21     highlighted text to yourself and let me know when  
22     you are finished?

23                  And let me also note, before you do  
24     that, sir, there is a long black line through  
25     this document.

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1 A Yeah.

2 Q I don't know what that is. That is  
3 how this was presented to me. So I will ask you  
4 to do your best to read around that and let me  
5 know when you finished reading this highlighted  
6 text.

7 A Okay.

8 Q So the one sentence I'll highlight  
9 for you, sir, is in reviewing the video, there  
10 was no inmate monitor observed checking on the  
11 inmate. Do you see that, sir?

12 A Yes.

13 Q So can we agree, going back to  
14 Exhibit 9, that all of these references from the  
15 inmate monitor, Mr. Caldwell, purporting to show  
16 that Mr. Freitag was sleeping in his cell are  
17 false statements?

18 MR. KOLANSKY: Objection to the form.

19 You can answer.

20 BY MR. FEINBERG:

21 Q Would you agree, sir?

22 A Yeah. It appears that way.

23 Q Okay. The last point on this, sir.  
24 I showed -- everything that I have just shown  
25 you, I showed to Officer Young, and I asked him

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1       whether he had done his job of supervising the  
2       inmate monitor properly.

3                   And I'm going to ask you to read his  
4       deposition testimony, and then ultimately, I'm  
5       going to ask you whether you agree with his  
6       assessment.

7                   I'm going to ask you to read -- it is  
8       a few pages, but I think it will go quickly.

9       Let's start at Page 105, Line 10. I'll highlight  
10      this text.

11                  Please read that page, let me know  
12      when you are finished, I'll move to the next  
13      page.

14                  A       I don't have anything on my screen.

15                  Q       Oh, I'm sorry. There. Do you have  
16      it now?

17                  A       Yeah.

18                  Q       Okay. Go ahead. Read that text, let  
19      me know when you are done.

20                  A       Does that end with the actual making  
21      on that side?

22                  Q       No. I am going -- that is why I have  
23      highlighted. Now I'm asking you to read --  
24      because I have to scroll over, sir, so I'm going  
25      to -- are you able to see that text? Is that

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1 large enough?

2 A I'm trying.

3 Q How about now?

4 A Yeah. I'm good. I'm good.

5 Q Okay. So read that page, please.

6 A Okay.

7 Q Let's read Page 106 now. Oh, yeah,  
8 107, I apologize.

9 A Okay.

10 Q Now I'm showing you just the first  
11 part of 108. I'll highlight what I'm asking you  
12 to look at.

13 A Okay.

14 Q Obviously, from this testimony, Mr.  
15 Young had no idea whether Mr. Caldwell, the  
16 inmate monitor, was looking in Mr. Freitag's  
17 cell; agreed?

18 A Yes.

19 Q Mr. Young also -- pardon me. Bear  
20 with me for one second. Well, let me ask it this  
21 way: Did Officer Young do his job in compliance  
22 with the level three directive, sir?

23 MR. KOLANSKY: Objection.

24 THE WITNESS: Doesn't appear so.

25 BY MR. FEINBERG:

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1 Q All right. In fact, this appears  
2 like this is a serious violation of the  
3 directive, would you agree?

4 MR. KOLANSKY: Objection. Calls for  
5 a conclusion.

6 BY MR. FEINBERG:

7 Q You can answer.

8 A It appears so.

9 Q Can I assume -- well, I'll represent  
10 to you, sir, that when I asked Mr. Young about  
11 these issues on -- whenever we did this  
12 deposition, it was in late December, this was the  
13 first time anyone had raised these questions with  
14 him.

15 Do you know whether anyone asked  
16 questions about what happened following Mr.  
17 Freitag's suicide concerning whether officers  
18 complied with their responsibilities?

19 A I can't assume.

20 Q Okay. So you don't know; is that  
21 right?

22 A I don't know for a fact.

23 Q All right. I'll show you one more  
24 exhibit, sir. This will be the last document I  
25 show you. Exhibit 27, this is a newly marked

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1 showed you, you saw -- you heard Officer Young's  
2 testimony about his understanding and his  
3 obligations, you saw the inmate monitor form  
4 purporting to show observations which never  
5 happened, and you read Mr. Caldwell's statement,  
6 what would you do?

7 MR. KOLANSKY: Calls for speculation.

8 Objection.

9 BY MR. FEINBERG:

10 Q And let me note that objection. Mr.  
11 Mitchell, you worked for the prison for 35 and a  
12 half years. You put in your time. You put in  
13 your service. You strike me as a person who  
14 understood how to supervise.

15 My question is: If you learned this  
16 information back then, based on all of that, what  
17 would you have done?

18 MR. KOLANSKY: Same objection.

19 THE WITNESS: Can I answer now?

20 BY MR. FEINBERG:

21 Q Please.

22 A Well, obviously, there would have to  
23 be an evaluation of the information in the video  
24 as seen, but definitely, there would have to be  
25 an intensive effort to retrain and follow up to

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1 one presented facts like these to you during your  
2 time there as deputy warden; is that correct?

3 A No, sir.

4 MR. FEINBERG: Let's go off the  
5 record for just a moment.

6 (Break.)

7 BY MR. FEINBERG:

8 Q Okay. Mr. Mitchell, we are back on  
9 the record after a short break. Did you realize  
10 during that break that any of your previous  
11 testimony was incorrect or incomplete?

12 A No, sir.

13 Q All right. Just a couple of very --  
14 of questions to wrap up. First, given everything  
15 that we discussed, sir, concerning compliance  
16 with directives under the level three watch, do  
17 you have any regrets about the way the county or  
18 its officers handled this situation concerning  
19 Mr. Freitag?

20 A That it was unfortunate.

21 Q Okay. When you say that was, what is  
22 the that you are referring to?

23 A No, I said it was unfortunate.

24 Q All right. Unfortunate in the way  
25 that the officers conducted themselves complying

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1      with the level three watch, is that what you are  
2      saying?

3                           MR. KOLANSKY: Objection.

4      BY MR. FEINBERG:

5                           Q        Is that a yes?

6                           A        Yes.

7                           Q        Yeah. And not only the officers, but  
8      in terms of the officer's supervision of the  
9      inmate monitors; is that correct, sir?

10                          A        Yes.

11                          Q        All right. So that covers it from my  
12     questions. I've noted that throughout the  
13     deposition, you appear to have been taking notes;  
14     is that correct, sir?

15                          A        That is what I do.

16                          Q        Yeah. Okay. And that's -- it's not  
17     a critique. Notes taken during the course of a  
18     deposition are discoverable information, so I'm  
19     going to ask you on the record to save those  
20     notes, provide them to your counsel, Mr.  
21     Kolansky, and I'll discuss with Mr. Kolansky how  
22     to handle those notes. Understood, sir?

23                          A        Yeah. Sure.

24                          Q        All right.

25                          A        A lot of doodling on them.